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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT WILLIAM WHITE,

Defendant and Appellant.

C062166

(Super.Ct.Nos.
SF090904A, SF110458A,
SF111632A)

Defendant Albert William White entered negotiated pleas of no contest in three separate cases. The sole issue he raises on appeal is the trial court's failure to obtain his *personal* entry in open court of his plea of no contest as to one count.¹ (Pen. Code, § 1018; further section references are to the Penal Code.) This error requires us to reverse the judgment and remand the

¹ After the completion of briefing, defendant moved to dismiss his appeal as abandoned. (Cal. Rules of Court, Rule 8.316(b)(2).) Because the trial court's error makes the conviction on this count subject to attack, we exercised our discretion to deny the motion. (*People v. Nelms* (2008) 165 Cal.App.4th 1465, 1470.)

matter for the trial court to obtain defendant's personal pleas of no contest to all counts included in the plea agreement and then to reimpose the sentence to which defendant agreed. Deeming defendant to have raised a claim of entitlement to more presentence conduct credit due to recent amendments to section 4019, we find that he does not qualify for them.

DISCUSSION

I

In 2004, defendant pled no contest to first degree burglary, and two misdemeanors, resisting a peace officer and battery. (Case No. SF090904A.) He was placed on probation.

In 2009, it was alleged that defendant committed felony driving under the influence of alcohol, driving with a blood alcohol content of .08 percent or greater, and driving while defendant's license was suspended. It was further alleged that he had a prior serious felony conviction for first degree burglary, subjecting him to enhanced punishment (§ 667, subds. (d) & (e)). (Case No. SF111632A.) The complaint was subsequently amended to charge defendant with additional driving offenses involving alcohol and the lack of a valid license, with recklessly fleeing a pursuing police vehicle, and with committing those new offenses while released on bail.

At a hearing in May 2009 on case Nos. SF110458A and SF111632A, the trial court confirmed its understanding that defendant desired to enter pleas of no contest to two counts of felony driving with more than .08 percent of blood alcohol--having prior convictions for driving under the influence of alcohol or drugs--and to recklessly

fleeing a pursuing police vehicle, and would also admit that he had a prior serious felony conviction.

In accordance with the negotiated plea agreement, other counts and allegations would be dismissed, and defendant would receive an aggregate term of four years in state prison in case Nos. SF110458A and SF111632A, and a consecutive term of 16 months in case No. SF090904A, as a result of his violation of probation in that case.

The court then granted defense counsel's motion to withdraw defendant's pleas of not guilty to the specified offenses in case Nos. SF110458A and SF111632A. After advising defendant of the rights he would be waiving on entry of his pleas, the court accepted on the record defendant's personal pleas of no contest to the two felony DUI offenses and his admissions that he had a prior serious felony conviction. However, the trial court and the parties forgot to obtain on the record defendant's personal plea of no contest to recklessly fleeing a pursuing police vehicle (the reckless-fleeing count).²

The parties stipulated to the factual bases for the three offenses. Defendant waived preparation of a probation report, and the court immediately sentenced him in the terms of the negotiated plea, which included a concurrent term for the reckless-fleeing count.

² The court's minutes reflect the entry of said no contest plea, but the reporter's transcript does not include it.

II

Defendant contends that, in the absence of his personal oral or written plea in open court to the reckless-fleeing count, the trial court did not have authority to impose sentence on it. Thus, he argues, we must vacate the concurrent sentence imposed for that offense and remand the matter for proper entry of a plea and resentencing in accordance with the plea agreement.

The People do not respond on the merits. They first claim the issue is not cognizable in the absence of a certificate of probable cause (CPC). (§ 1237.5.) But they fail to explain how the CPC requirement applies in the absence of a no contest plea underlying a judgment. Indeed, on November 9, 2009, this court deemed a CPC to be unnecessary. The People then claim we should estop defendant from challenging the lack of a personal plea, without explaining how a judgment could be imposed for the reckless-fleeing count even though he did not enter a no contest plea to that count.

Section 1018 requires that a plea of no contest be entered "by the defendant himself or herself in open court." As to the reckless-fleeing count, the trial court inadvertently failed to comply with that statutory requirement. Thus, we must reverse the judgment as to that count. (*Johnson v. Superior Court* (1981) 121 Cal.App.3d 115, 118-119; *People v. Vanley* (1974) 41 Cal.App.3d 846, 854-855; compare *People v. Weaver* (2001) 26 Cal.4th 876, 963-964 [trial court *confirmed* defendant adopted defense counsel's representations as to defendant's desire to enter plea].)

Because the missing plea was part of a negotiated package, we shall reverse the judgment in its entirety. This will prevent any opportunity for defendant to trifle with the court (*People v. Fulton* (2009) 179 Cal.App.4th 1230, 1238) by refusing on remand to enter a no contest plea to reckless-fleeing count. He will be required to abide by the original terms of the plea agreement or face trial on all the charges, including those that were dismissed in accordance with the plea agreement.

III

Pursuant to this court's miscellaneous order number 2010-002, filed March 16, 2010, we deem defendant to have raised the issue (without briefing) of whether amendments to section 4019, effective January 25, 2010, entitle him to further presentence conduct credits. In *People v. Brown* (2010) 182 Cal.App.4th 1354, this court concluded that the amendments apply to pending appeals. However, defendant does not qualify due to his previous conviction for a serious felony (§ 4019, subds. (b)(2) & (c)(2); § 1192.7, subd. (c)(18)).

DISPOSITION

The judgment is reversed, and the matter is remanded for the limited purpose of taking defendant's pleas and admissions and reimposing the agreed sentence. If defendant does not agree

to reenter his pleas and admissions, the matter shall proceed to trial on all the charges against him.

SCOTLAND, P. J.

We concur:

SIMS, J.

BUTZ, J.